During that time Krueger participated in approximately 7000 phone calls related to her prostitution business. (Tr. 329-31).

Maria Theresa Howard ("Aloha") was the prosecution's final witness. (Tr. 352-56). She was 30 years old when she testified and she had been working as a prostitute for 4 years. *Id.* She admitted that while in Miami, she worked for Judy Krueger. (Tr. 356-58). Ms. Howard confirmed Krueger's testimony that the money paid by customers for sex was split 60/40 with the prostitute getting the larger cut. *Id.* The call girls also kept their tips but they were required to pay rent while staying in Krueger's condos. Howard described the relationship between Petitioner and Krueger as customer and madam. *Id.*

> Q. But she's [Krueger] the one who set all the rules for the prostitution business, is that correct?
>
> A. Yes.
>
> Q. Michael Giorango didn't set any rules, did he?
>
> A. No, sir.
>
> Q. He didn't operate a brothel, did he?
>
> A. No, sir.
>
> Q. He didn't operate a prostitution business, did he?
>
> A. No, sir.
>
> Q. He didn't get a cut of the money, did he?
>
> A. No, sir.

Q. In fact, he reached in his own pocket and paid, is that correct?

A. Yes, that's correct.

(Tr. 369-370).

Ms. Howard further testified that on January 31 she went with Monique, another of Krueger's prostitutes, to Giorango's Super Bowl party at the Lorraine Hotel. (Tr. 359). While there, Ms. Howard engaged in sex with one of the men. The man gave her a tip but did not pay the $400 hourly rate. *Id.* Ms. Howard then called Krueger and asked who would pay the hourly rate. (Tr. 362-64). After a brief discussion, Ms. Krueger told Ms. Howard that Petitioner would pay her, and he did. Ms. Howard, like Ms. Krueger, was indicted and agreed to plead guilty to the charges in the indictment.

At the close of the Government's case, defense counsel moved for a directed finding pursuant to Rule 29 of the Federal Rules of Criminal Procedure. The District Court granted the motion as to Count XVI. As to Count VI, the District Court held that while a customer who was more than a "mere" customer is subject to prosecution under the Travel Act. Count VI, therefore, remained to be decided by the jury. After the defense rested, defense counsel renewed their Rule 29 motion which the District Court again denied.

The jury returned a guilty verdict on Count VI. Later, the District Court imposed a sentence of three years probation with six months intermittent confinement, but granted Petitioner's motion to remain on bond pending the outcome of his direct appeal.

## REASONS FOR GRANTING THE WRIT

Review by this Court is necessary because the lower courts' interpretation of the Travel Act a) violates the clear statement doctrine and the rule of lenity; b) creates a conflict among the circuits; and c) is both unworkable and capricious.

The scope of Congress' police power under the Commerce Clause is the subject of intense debate among the members of this Court. *See Gonzalez v. Raich*, 125 S.Ct. 2195, 162 L. Ed. 2d 1 (2005); *United States v. Lopez*, 517 U.S. 549, 131 L. Ed. 2d 626 (1995); *United States v. Morrisson*, 529 U.S. 598, 146 L. Ed. 2d 658 (2000). The clear statement doctrine and the rule of lenity are well established interpretational tools the Court employs to avoid unwarranted conflict between the judicial and the legislative branches over the scope of Congress' power to use the Commerce Clause. *See United States v. Universal C.I.T. Credit*, 344 U.S. 218, 221-22, 97 L. Ed. 260 (1952); *United States v. Jones*, 529 U.S. 848, 858, 146 L. Ed. 2d 902 (2000). These interpretational rules require Congress to unequivocally announce its intention to interject the federal government into questions typically relegated to the states, particularly when the legislation is ambiguous or is at the outer limits of the Commerce Clause. *Gregory v. Ashcroft*, 501 U.S. 452, 460-66, 115 L. Ed. 2d 410 (2001).

Congress' power to legislate is limited by Article I, which does not include an express grant of plenary police powers to the federal government. *Gibbons v. Ogden*, 9 Wheat 1, 195, 6 L. Ed. 23 (1824); *United States v. Lopez*, 514 U.S. 549, 566-68, 131 L. Ed. 2d 262 (1995). The Commerce Clause authorizes criminal legislation, but only

when: a) there is a sufficient nexus to interstate commerce, and b) Congress clearly expresses its intent to regulate a specific conduct. *Lopez*, 514 U.S. at 566-68.

To avoid difficult questions concerning the scope of Congress' police powers under the Commerce Clause, the Court has employed at least three interpretational tools. The clear statement doctrine requires an express statement of Congress' intention to exercise its police power under the Commerce Clause. *United States v. Bass*, 404 U.S. 336, 350, 30 L. Ed. 2d 488 (1971). The rule of lenity counsels against sweeping interpretation of federal criminal laws whenever they are of ambiguous ambit. *See Rewis v. United States*, 401 U.S. 808, 812, 28 L. Ed. 2d 493 (1971) – limiting scope of Travel Act. In addition, the Court long ago adopted a guiding principle that "where a statute is susceptible of two constrictions, by one of which grave and doubtful constitutional questions arise – by the other of which such questions are avoided, our duty is to adopt the latter." *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408, 53 L. Ed. 836 (1909); *see also Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr.*, 485 U.S. 568, 575, 99 L. Ed. 2d 645 (1988). Based on these interpretational tools, the Court consistently has held that federal criminal legislation that overlaps state criminal codes should be construed narrowly. *Jones*, 529 U.S. at 858-60.

In Petitioner's case, the lower courts violated all of these essential limits on Congress' power and in the process created a conflict among the circuits. Review by this Honorable Court is necessary to rein in the lower courts' unwarranted expansion of the Travel Act and to

bring uniformity of application of the Act among the circuits.

The Travel Act, in relevant part, provides "whoever . . . uses any facility . . . with the intent to otherwise promote, manage, establish or carry on, or facilitate the promotion, management, establishment or carrying on of any unlawful activity . . . " is guilty of a federal felony offense. 18 U.S.C. § 1952(a)(3). By contrast, solicitation of a prostitute is a misdemeanor under Florida law. F.S.A. 796.07(2)(f) and (4)(a).

A similar contrast was the subject of review by the Court in *Rewis v. United States*, 401 U.S. 808, 28 L. Ed. 2d 493 (1971). The Court held that "it cannot be said, with certainty sufficient to justify a criminal conviction that interstate travel by mere customers of a gambling establishment should violate the Travel Act." *Rewis*, 401 U.S. at 811. The Court in *Rewis* was struck by the fact that an expansive reading of the Act "would alter sensitive federal-state relationships" yet that possibility was "not even discussed in the legislative history of" the Act. *Id.*, at 812. Thus, it would seem that *Rewis* compels dismissal of the charges against Petitioner. Since, by all accounts, he was a customer, not an owner, manager, agent, or employee of the prostitution ring.

The Government's star witness was Judy Krueger, the owner and operator of the prostitution business. (Tr. 190-96). She repeatedly stated that Petitioner was a customer, and nothing more. Petitioner paid for services just like every other customer. (Tr. 283-88). He had no control over the fees he was charged or when and where he, or his friends, would meet with Ms. Krueger's working ladies. *Id.* Krueger, and Krueger alone, controlled every aspect of the

business and she and her employees were the only ones who were in the business for a profit. *Id.*

One would think *Rewis* is indistinguishable from Petitioner's case. But the lower courts broke from *Rewis* citing the Court's reference to "mere customers" (*Rewis*, 401 U.S. at 811) as proof that other customers, those who promote or facilitate an illegal enterprise, violate the Act. As the Eleventh Circuit put it, "there was sufficient evidence for the jury to have found Giorango promoted or facilitated Judge Krueger's prostitution enterprise." (App. 1) The Eleventh Circuit, as well as the District Court, took a broad view of "facilitation" and concluded that "people who aid, help or assist the promotion of, or [make] easier or possible, the illegal actions" (App. 2) are guilty of violating the Travel Act.

That construction of the Act is irreconcilable with the clear statement doctrine, the rule of lenity and *Rewis*. The Act, as the Court noted in *Rewis*, is ambiguous as to its scope and does not include a clear statement of intent to punish the patrons of an illegal enterprise. The Eleventh Circuit's decision, therefore, is plainly wrong, but so what. Why should this Honorable Court care about a minor felony conviction affirmed by an unpublished per curiam order?

Petitioner's personal interests aside, the Eleventh Circuit's expansive reading of the Act creates a conflict among the circuits. No other circuit has upheld a conviction of a patron. In fact, Petitioner has found no case involving the prosecution of a patron.

Until this case, the Travel Act was applied only to those persons who were actively engaged in the unlawful enterprise for profit and it was not applied to customers of

the enterprise. When limited to operators and managers, the Travel Act does not trample on "sensitive federal-state relationships" and does not "transform relatively minor state offenses into federal felonies." *Rewis*, 401 U.S. at 812. By limiting the Travel Act to managers and operators who conduct business across state lines, the Travel Act is confined to its proper, constitutional purpose and conforms to the clear statement doctrine and the rule of lenity. *Rewis*, 401 U.S. at 810-12.

Neither the text nor the legislative history of the Travel Act "clearly states" a Congressional intention to prosecute the patrons of an illegal enterprise. Attorney General Robert F. Kennedy proposed the legislation and testified before Congress in the support of the bill. The purpose of the legislation is clear from his testimony:

> We are seeking to take effective action against the racketeer who conducts an unlawful business but lives far from the scene in comfort and safety . . .
>
> The target clearly is organized crime. The travel that would be banned is travel 'in furtherance of a business enterprise which involves gambling, liquor, narcotics, and prostitution offenses or extortion or bribery. Obviously, we are not trying to curtail the sporadic, casual involvement in these offenses, but rather a continuous course of conduct sufficient for it to be termed a business enterprise.

*Rewis*, 401 U.S. at 812 n.6.

Because the Travel Act does not, in its text or its legislative history, clearly indicate the intent to punish some customers, but not all customers, of the illegal

enterprise, the Act cannot be applied to Petitioner. He was a customer of the illegal enterprise, a point the Government conceded. The Government and the lower courts, however, distinguished "mere customers" from other customers, even though Congress did not clearly express the intention to draw any such distinction. The legislative history of the Act is replete with references to racketeers, the "top guys," the owners, and the managers, but there is no legislative evidence that the Act was to be applied to customers. *Rewis*, 401 U.S. at 810-12.

As Judge Friendly explained in *United States v. Archer*, 486 F.2d 670 (2nd Cir. 1973), "read literally [the Travel Act] would cover a $10 payment to fix a traffic ticket" provided the errant driver "walked across a state line to pay off the policeman." *Archer*, 486 F.2d at 679. Congress did not "clearly state" its intention to include errant drivers or men who hire prostitutes within the scope of the Travel Act. For that reason, application of the Act to customers, such as Petitioner, is irreconcilable with the clear statement doctrine.

The judicial history of the Act also reveals an established pattern and practice of prosecuting owners, managers, and paid employees, but not customers. *See United States v. Jones*, 642 F.2d 909 (5th Cir. 1981); *United States v. Langley*, 919 F.2d 926 (5th Cir. 1990). A review of the reported cases from the Federal circuits proves that customers of illegal enterprises are not even charged in any of the other Circuits. Admittedly this is not conclusive proof of the Act's scope. However, the absence of any reported case applying the Act to a customer is consistent with the clear statement doctrine and the rule of lenity. *See United States v. Herrara*, 584 F.2d 1137 (2nd Cir. 1978) defendants were the owners, managers and

operators of the business and routinely crossed state lines to run the business; *United States v. Whitehead*, 618 F.2d 523, 26 (4th Cir. 1980) defendants operated an interstate prostitution ring; *United States v. Langley*, 919 F.2d 926 (5th Cir. 1990), defendant was the owner and manager of a prostitution business; *United States v. Henderson*, 434 F.2d 84 (6th Cir. 1970) the prosecution was limited to the owner/operator of the prostitution business; *United States v. Wingo*, 394 F.2d 484, 486 (6th Cir. 1968) defendant was "engaged in promoting prostitution for many years in and *operated* a house of prostitution. . . ."; *United States v. Baker*, 227 F.3d 955 (7th Cir. 2000) defendant "*operated* massage parlors that were fronts for his prostitution business." *Baker*, 227 F.3d at 958; *United States v. Arrandondo*, 483 F.2d 980 (8th Cir. 1973), defendants recruited the prostitutes, provided them with places to live, and split the profits with them; *United States v. Hiatt*, 527 F.2d 1048 (9th Cir. 1976) the defendant "was the owner of a place of business" and had "an active role in its management." *Hiatt*, 527 F.2d at 1049.

While these cases do not by themselves prove the Travel Act must be limited to owners and managers, they are compatible with the clear statement doctrine and the rule of lenity. These cases also show a consistent, national limitation on the Act which, until Petitioner's case, always exempted patrons from prosecution.

As a practical matter, there is no principled, workable method by which juries can draw distinctions among customers, allowing some to be convicted when others cannot even be prosecuted. *Rewis*, 401 U.S. at 809-11. The test for prosecution under the Act cannot rest on degrees of "facilitation;" all customers facilitate the illegal enterprise

and the Act does not provide any guidance on how a distinction among customers should be drawn.

Where does a court draw the line between a "mere customer" and a "prosecutable customer"? This question was not answered by the lower courts, which leaves the Travel Act in a dense judicial fog with each customer of the illegal enterprise subject to prosecution, or given a free pass, at the Government's whim.

All of these imponderables and ambiguities are removed by limiting the Act to its intended purpose. Customers are not within the intent or the ambit of the Travel Act. Only those persons who manage, operate or profit from the prostitution business – those who get paid – are chargeable.

Here, for example, the Government insisted that Petitioner facilitated and promoted Krueger's business by referring clients and occasionally paying for them. Krueger, however, testified that Petitioner was a good customer but no different than any other customer. (Tr. 283-87). He paid the same fees every other customer paid. *Id.* He had to arrange his dates through Krueger like every other customer. (Tr. 190-96). He referred clients to her but so too did many other customers. *Id.* His involvement with Krueger's illegal enterprise was limited to sporadic hiring of her prostitutes. *Id.* Like every other customer, he paid for their services. *Id.* Like every other customer, he had the choice of providing a room or using Krueger's condos. *Id.* Like every other customer, he paid more if he elected to provide the room. Like every other customer, Petitioner could ask for a specific woman at a precise time and location but Ms. Krueger had the final

say with him, just as she did with every other customer. *Id.*

Petitioner was a good customer. He tipped well and referred other customers, but he never was involved as an owner, manager, agent, or employee.

On appeal to the Eleventh Circuit, Petitioner maintained that customers are outside the scope of the Travel Act and that the Act did not distinguish between "mere customers" and customers who somehow were more than "mere customers." The Eleventh Circuit held that anyone, including a customer, who promotes or facilitates an illegal enterprise is subject to the Travel Act. (App. 1, 2) On that basis, the Eleventh Circuit affirmed Petitioner's conviction and sentence. (App. 1, 2)

The lower courts' attempt to distinguish "mere customers" from other customers also vests prosecutors with unchecked discretion. Here, for example, the indictment involved a national prostitution ring that apparently was in business for several years. Customers were seen daily by many women in many cities across the country. Of all the thousands of customers, only one was indicted, even though every customer could have been charged and convicted under the "promote" or "facilitate" test applied by the lower courts. Every customer in every city promoted and facilitated the illegal enterprise. Some, no doubt, promoted more than others, but every customer was "aiding" and "assisting" and making "easier" the prostitution business. Based on Ms. Krueger's uncontradicted testimony, Petitioner was a good customer, but only a customer. There is no objective, principled basis to distinguish among customers. In that respect, the lower courts' rulings are not only inconsistent with *Rewis* and the other

circuits and district courts across the county, those rulings allow for standardless, unrestrained prosecutorial discretion.

## CONCLUSION

For all of these reasons, this Honorable Court should issue the Writ of Certiorari and review Petitioner's case.

Respectfully submitted,

THOMAS PETERS
*Counsel of Record*
MARY DESLOOVER
*Attorneys for Petitioner*
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Suite 1675
Chicago, Illinois 60605
312-697-0022

# APPENDIX

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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No. 04-13624
Non-Argument Calendar

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D.C. Docket No. 02-20645-CR-AJ

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL GIORANGO,
a.k.a. Danny,

Defendant-Appellant.

---

Appeal from the United States District Court
for the Southern District of Florida

---

(Filed June 27, 2005)

Before TJOFLAT, DUBINA and COX, Circuit Judges.

PER CURIAM:

Michael Giorango appeals his conviction, following a jury trial, for violation of the Travel Act, 18 U.S.C. § 1952. Having considered the briefs, and relevant parts of the record, we conclude that there was sufficient evidence for the jury to have found that Giorgango promoted or facilitated Judy Krueger's prostitution enterprise. *See Rewis v.*

*United States*, 418 F.2d 1218, 1220-21 (5th Cir. 1969), *rev'd on other grounds*, 401 U.S. 808, 91 S. Ct. 1056 (1971), ("The language of the [Travel Act] appears clearly to be aimed at those . . . people who aid, help or assist the promotion of, or making easier or possible, the illegal actions. . . ."); *see also United States v. Corona*, 885 F.2d 766, 773 (11th Cir. 1989). Giorango's conviction and sentence is, therefore,

**AFFIRMED.**

## APPENDIX 2

**United States District Court**
**Southern District of Florida**
**MIAMI DIVISION**

| | |
|---|---|
| **UNITED STATES OF AMERICA** | **JUDGMENT IN A CRIMINAL CASE** |
| **v.** | **Case Number: 02-20645-CR-JORDAN (13)** |
| **MICHAEL GIORANGO** | (Filed Jul. 7, 2004) |
| | USM Number: 99109-024 |
| | Counsel For Defendant: Mary F. DeSloover, Esq. |
| | Counsel For The United States: Richard Gregory, AUSA |
| | Court Reporter: Francine Salopek |

The defendant was found guilty on Count(s) Six of the Indictment.

The defendant is adjudicated guilty of the following offense(s):

| TITLE/ SECTION NUMBER | NATURE OF OFFENSE | OFFENSE ENDED | COUNT |
|---|---|---|---|
| 18 U.S.C. Section 1952(a)(3) | Violation of the Travel Act | January 22, 2002 | Six |

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Remaining counts are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

Date of Imposition of Sentence:
7/7/2004

/s/ Adalberto Jordan
ADALBERTO JORDAN
United States District Judge

July 7, 2004

**PROBATION**

The defendant is hereby sentenced to probation for a term of **3 years**.

The defendant may voluntarily surrender in 30 days.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

**The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.**

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

1. The defendant shall not leave the judicial district without permission of the court or probation officer;
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

## SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional condition(s) of probation:

The defendant shall serve six (6) months in Intermittent Confinement to be served within one year,

either in (a) two week intervals or (b) one month intervals, in the following manner:

(a) The Court prefers that Intermittent Confinement shall be at a BOP facility in Miami or elsewhere, if it can be accommodated, or

(b) If the BOP cannot accommodate such placement, then confinement can be at a halfway house, Community Corrections Center, of other permissible facility.

The defendant shall perform **150 hours of community service** over the period of supervision, as directed by the United States Probation Officer.

The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days, unless excused by the U.S. Probation Officer. Further, the defendant shall provide documentation, including but not limited to, pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and any other documents requested by the U.S. Probation Office.

The defendant shall submit to a search of his person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments.

| Total Assessment | Total Fine | Total Restitution |
|---|---|---|
| **$100.00** | **$5,000.00** | **$** |

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A. Lump sum payment of **$100.00** due immediately.

E. Special instructions regarding the payment of criminal monetary penalties:

Fine in the amount of $5,000.00 is to be paid within 30 days.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

**The assessment/fine/restitution is payable to the U.S. COURTS and is to be addressed to:**

**U.S. CLERK'S OFFICE**
**ATTN: FINANCIAL SECTION**
**301 N. MIAMI AVENUE, ROOM 150**
**MIAMI, FLORIDA 33128**

**The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.**

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs including cost of prosecution and court costs.

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## APPENDIX 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-20645-CR-JORDAN

UNITED STATES OF AMERICA )
)
vs. )
)
MICHAEL GIORANGO )

### ORDER

(Filed Aug. 28, 2003)

The parties have agreed to have me decide prior to trial, based on the transcripts of intercepted phone calls, whether the conduct of Michael Giorango, as alleged in Counts 6 and 16, violates the Travel Act, 18 U.S.C. § 1952(a)(3). Having listened to the calls, reviewed the transcripts, and considered the arguments and submissions of counsel, I conclude that a reasonable jury could find Mr. Giorango guilty of Count 6 but that no reasonable jury could find Mr. Giorango guilty of Count 16.[1]

### I. THE TRAVEL ACT

In relevant part, § 1952(a)(3) provides as follows:

> (a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to . . .

[1] To the extent that Mr. Giorango challenges the sufficiency of the charges against him, I reject that argument. Counts 6 and 16 each allege the required elements under the Travel Act

> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform – (A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both[. . . . ]
>
> (b) As used in this section (i) "unlawful activity" means . . . prostitution offenses in violation of the laws of the State in which they are committed or of the United States[.]

The statutory language is but a starting point, however, as there are numerous decisions interpreting the reach and scope of the Travel Act. I will discuss those decisions after describing Mr. Giorango's conduct.

## II. The Charges and Mr. Giorango's Conduct

The indictment charges Mr. Giorango with two counts of violating the Travel Act. Count 6 charges that on January 22, 2002, Mr. Giorango – who was in Illinois – made a phone call to Judy Kruger – who operated a brothel in Miami – concerning prostitutes for a party at the Lorraine Hotel in Miami Beach. Count 16 charges that on March 7, 2002, Mr. Giorango called Ms. Kruger from Illinois and again spoke to her about prostitutes.

According to the tapes and transcripts provided by the parties, Mr. Giorango's conduct consisted of the following.

***January 22, 2002.** Mr. Giorango spoke on the phone with Ms. Kruger, who operated a brothel in Miami, Florida. Mr. Giorango told Ms. Kruger that he was coming (from Chicago, as indicated in later calls) to Miami for 3-4 weeks, and was going to have a party with "high rollers"

on January 31, which was Super Bowl weekend. Mr. Giorango also asked about the availability of various prostitutes for the party, and discussed specific women with Ms. Kruger.

**January 24.** Mr. Giorango again spoke to Ms. Kruger. They talked about the upcoming party, what prostitutes would be there, and confirmed the time.

**January 29.** Mr. Giorango arrived in Miami. He called Ms. Kruger and told her, among other things, that there would be 10-15 men and some women at the party. Ms. Kruger told him that she would send about 4-7 prostitutes.

**January 30.** Mr. Giorango talked to Ms. Kruger. He requested that she send as many prostitutes as she could to the party because that would make him look good.

**January 31.** Mr. Giorango and Ms. Kruger spoke about the party and finalized details about who was going to attend. Ms. Kruger subsequently received a call from one of the prostitutes at the party. The prostitute told Ms. Kruger she had gone "upstairs" with a man from Chicago for 30 minutes, and had only been given $50. She wanted to know if she was going to be paid by this client or by Mr. Giorango. Ms. Kruger then spoke to Mr. Giorango, who said: "I told the guy to tip her, but I'm gonna take care of her." Mr. Giorango and Ms. Kruger agreed that Mr. Giorango would pay the prostitute $400.

**February 3.** Mr. Giorango called Ms. Kruger, told her he and others were watching the football game (presumably the Super Bowl), and asked if anyone "nice" was working. Ms. Kruger said no one was available at the

time, but she would call back if there was anything she could do.

**February 4.** Mr. Giorango phoned Ms. Kruger and said that he wanted to "treat" a good friend of his. Ms. Kruger replied that she would find out if anyone was available that day or the next day. After a series of calls, Mr. Giorango and Ms. Kruger agreed that one of the prostitutes would go to Mr. Giorango's hotel the following night. Mr. Giorango said he would provide a "very big" tip, and later told Ms. Kruger he had given the prostitute "a couple of hundred extra."

**February 22.** Mr. Giorango and Ms. Kruger spoke again. Mr. Giorango inquired about the availability of certain prostitutes, and Ms. Kruger said she would get back to him.

**March 3.** Mr. Giorango called Ms. Kruger from Chicago. Ms. Kruger told Mr. Giorango that she had a "nice" girl for him when he returned to Miami.

***March 7.** Mr. Giorango called Ms. Kruger, and talked to her about the negotiations involved in his attempt to purchase a hotel from two young businessmen from Los Angeles. Mr. Giorango asked Ms. Kruger if she knew the men, or they were clients. She replied that she did not know them. Mr. Giorango then told Ms. Kruger that he had partners of his flying in for the closing. After discussing the hotel deal some more, Mr. Giorango asked Ms. Kruger if she had any "pretty girls around today or tomorrow, this weekend." Ms. Kruger gave Mr. Giorango some options. The conversation ended with Mr. Giorango telling Ms. Kruger that if she had guests they could stay "comp" at his hotel, the Lorraine.

**March 14.** Ms. Kruger called Mr. Giorango. The two discussed various prostitutes.

**March 15.** Mr. Giorango called Ms. Kruger with his "good friend," Allen, on the line. Mr. Giorango explained that "they" were going to be coming into town and were going to be staying 2-3 weeks, and asked about various prostitutes. Ms. Kruger explained who was available, and Mr. Giorango said he would speak to her later.

## III. Analysis

The elements of § 1952(a)(3), as pertinent here, are "an unlawful activity, generally termed an 'enterprise'; (b) knowledge of the defendant of the unlawful activity; and (c) use of interstate commerce . . . to facilitate the carrying on of the unlawful activity[.]" *United States v. Corona*, 885 F.2d 766, 771 (11th Cir. 1989) The defendant must also have "thereafter" committed one of the acts specified in subsection (a)(3); in other words, he must have subsequently committed an act to promote, manage, establish, carry on, or facilitate the unlawful activity. *See id.* An enterprise is a "continuous course of conduct, rather than sporadic casual involvement in a proscribed activity." *United States v. Bates*, 840 F.2d 858, 863 (11th Cir. 1988) (citations and internal quotation marks omitted).

There is no real dispute, based upon the facts summarized above, that Ms. Kruger's prostitution operation constituted an enterprise, that Mr. Giorango knew about the operation, and that Mr. Giorango used interstate communications facilities (by making interstate phone calls to Ms. Kruger). Because there is no evidence that any prostitutes sent by Ms. Kruger to Mr. Giorango crossed state lines, the battle is over whether Mr. Giorango's

conduct constituted the sort of "thereafter" facilitation necessary to sustain a conviction under § 1952(a)(3).

Any discussion of the Travel Act must begin with *Rewis v. United States*, 418 F.2d 1218 (5th Cir. 1969), *rev'd in part*, 401 U.S. 808 (1971). In that case, the Fifth Circuit reversed the Travel Act convictions of two Georgia residents, Fuller and Nightengale, who crossed state lines to frequent a gambling establishment on the Florida side of the Florida-Georgia line and/or to work at the establishment:

> The case against Fuller and Nightengale is very thin, indeed, if it must, as we think it does, depend upon a showing that they were other than bettors themselves.
>
> Whether the reading of the federal statue [sic] be casual or intense, it appears that it is not aimed at making a federal crime out of a person's crossing a state line for the purpose of placing a bet. . . . The language of the statute appears clearly to be aimed at those things or people who aid, help, or assist the promotion of, or making easier or possible, the illegal actions mentioned in paragraph three. We think that, at the least, the word "facilitate" means . . . "to make easy or less difficult." We do not believe that the patronizing by interstate gamblers of a gambling establishment fits within the terminology of "promote, manage, establish, carry on, or facilitate the promotion, management, establishment or carrying on of any unlawful activity."

*Id.* at 1220-21 (citation omitted). The Fifth Circuit, however, affirmed the Travel Act convictions of two Florida residents, Rewis and Williams, who operated the gambling establishment because the establishment was frequented

by some Georgia residents, even though Rewis and Williams themselves did not cross state lines:

> Basically what we decide is that the operation by Rewis and Williams of the gambling establishment with full knowledge that it was being maintained largely by the attraction of interstate customers, was sufficient to warrant the jury's finding them guilty of a conspiracy to conduct such an operation and also to find them guilty of the specific charges of substantive acts in violation of the statute which produced their convictions and sentences.

*Id.* at 1222.

The Supreme Court granted certiorari, and reversed the Travel Act convictions of Rewis and Williams. It rejected the notion that "Congress intended that interstate travel by mere customers of a gambling establishment should violate the Travel Act," and refused to hold that "conducting a gambling operation frequented by out-of-state bettors, by itself, violates the Act." 401 U.S. at 811. Continuing, the Court disagreed with the government's contention that the "Act is violated whenever the operator of an illegal establishment can reasonably foresee that customers will cross state lines for the purpose of patronizing the illegal operation[.]" *Id.* at 812-13. With respect to the government's alternative argument that the Act reaches those operators "who actively seek[] to attack [sic] business from another State," the Court explained that "the conduct deemed to be active encouragement must be more than merely conducting the illegal operation[.]" *Id.* at 813. Declining to address this alternative argument – because it was not the theory under which the defendants were prosecuted – the Court closed with this dicta:

"Although we are cited to no cases that have gone so far and although much of what we have said casts substantial doubt on the government's broad argument, there may be occasional situations in which the conduct encouraging interstate patronage so closely appropriates the conduct of a principal in a criminal agency relationship that the Travel Act is violated." *Id.* at 813-14.

The parties, recognizing that *Rewis* provides the axis for their differing positions, offer very different characterizations of Mr. Giorango's conduct.

The government, citing to *United States v. Rogers*, 788 F.2d 1472, 1475 (11th Cir. 1988), *overruled on other grounds*, 172 F.3d 806 (11th Cir. 1999) (*en banc*), argues that it need "show only that [Mr. Giorango] made the unlawful activity [here prostitution] easy or less difficult," and says that this showing is satisfied by Mr. Giorango bringing "high rollers" to Miami and providing his hotel for use by Ms. Kruger's prostitutes. The government also points out that Mr. Giorango paid for some of the prostitutes who met with his friends or acquaintances, and vouched for some of them with Ms. Kruger.[2]

Mr. Giorango, on the other hand, describes himself as no more than a customer or client (even though he paid for some of his friends) who was not making any money from the prostitution services provided by Ms. Kruger. He also

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[2] According to the government, Mr. Giorango and Ms. Kruger had a pre-existing business relationship. There is, however, no proof with regard to such a relationship in the phone calls that have been provided to me by the parties. If the government could show that Ms. Kruger sent some guests to Mr. Giorango's hotel pursuant to Mr. Giorango's "comp" offer, that would be an important fact. But, as noted, there is no such evidence in the materials given to me.

says that there is no evidence that he knew that any of the prostitutes were traveling in interstate commerce. *See Perrin v. United States*, 444 U.S. 37, 50 (1979) (explaining that *Rewis* was concerned with the "tenuous interstate commerce element," and that the case held that "Congress did not intend that the Travel Act should apply to criminal activity within one State solely because that activity was sometimes patronized by persons from another State").

Although the issue is not an easy one, I conclude that the evidence is legally sufficient to allow a reasonable jury to return a guilty verdict on Count 6. Prostitution, by itself, is not a federal offense, *see, e.g., United States v. Holcomb*, 795 F.2d 1320, 1327 (5th Cir. 1986), though it can be one of the unlawful activities allowing prosecution under the Travel Act. After *Rewis*, it is settled in the Eleventh Circuit that a Travel Act conviction cannot rest on the "basis of the interstate travel of the customers [of the illegal activity]," *United States v. Johns*, 444 F.2d 58, 58-59 (5th Cir. 1971), so it is difficult for the government to rely simply on the travel to Florida of Mr. Giorango's "high rollers." *See also United States v. Brouillette*, 478 F.2d 1171, 1178 (5th Cir. 1973) (stating, in Travel Act case, that "Congress, by passing 18 U.S.C. § 1952, did not intend to make every conceivable crime that occurs in a motel or hotel a federal offense punishable in the federal courts," as such a "construction of the statute would be extremely unreasonable").

The government relies on *United States v. Clemones*, 577 F.2d 1247 (5th Cir. 1978), so I discuss it in detail. The case involved a Travel Act prosecution arising out of multi-state prostitution activities. One of the defendants, Johnson, and another co-defendant arranged to have a prostitute travel from Georgia to Florida to entertain a man

("the Colonel") with whom Johnson "was attempting to negotiate a land transaction." *Id.* at 1254. Johnson and a third co-defendant then "drove [the prostitute] to [Johnson's] motel in Florida, where she met 'the Colonel' and had sexual relations with him. He paid no money to her for her favors, and as far as she knew he paid no money to anyone." *See id.* The former Fifth Circuit upheld Johnson's Travel Act conviction, explaining that "the jury could have concluded, however, that [Johnson's] motel was a business enterprise involving prostitution and that the trip to Florida was intended in part to facilitate the carrying on of unlawful activity in the motel." *Id.* In my view, *Clemones* helps the government get to a jury on Count 6, but not Count 16.

There are some differences between *Clemones* and this case. First, unlike *Clemones*, there was no interstate travel by the prostitutes here (and certainly no interstate travel of prostitutes arranged by Mr. Giorango). Second, Mr. Giorango did not drive or take the prostitutes anywhere; they simply showed up, as arranged, at his hotel or other appointed locations. Third, the phone calls do not indicate or suggest that Mr. Giorango was doing any business with the "high rollers" (other than their staying at his hotel), so the "high rollers" are no different than the out-of-state customers who frequented the gambling establishment in *Rewis*. As we know, the convictions of the operators in *Rewis* were set aside, and post-*Rewis* precedent from Eleventh Circuit – particularly *Johns* and *Brouillette* – reaffirm that the frequenting of the hotel by the "high rollers" is not enough to subject Mr. Giorango to

Travel Act liability.[3] If the government's evidence showed (or allowed a reasonable jury to find) that Mr. Giorango was providing the prostitutes to the "high rollers" as further encouragement for them to do some business with him, *Clemones* might allow a conviction on that theory. But there is no such evidence from what the parties have provided.

Despite these differences, *Clemones* supports the government on Count 6, which is based on a phone call from Mr. Giorango to Ms. Kruger on January 22. The calls and transcripts reflect that Mr. Giorango, *after that conversation*, took it upon himself to pay the fees and tips of prostitutes on January 31 and February 4 – prostitutes who were with other men. The government says that this makes Mr. Giorango a sort of a middleman or broker, while Mr. Giorango disputes this characterization. Whatever the semantics, this evidence could be found by a reasonable jury to constitute facilitation of prostitution sufficient to satisfy § 1952(a)(3)'s "thereafter" clause. A reasonable jury could find that when Mr. Giorango assumed some or all of the payment responsibilities on January 31 and February 4 for prostitutes *who were with other men*, he became more than a mere customer or facilitator and made the prostitution activities less difficult. A reasonable jury could also find this evidence sufficient to convict under 18 U.S.C. § 2. *See United States v.*

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[3] Not all Eleventh Circuit cases addressing the Travel Act are discussed in this order, for some are distinguishable or do not provide much guidance. *See, e.g., United States v. Cole*, 704 F.2d 554, 558-59 (11th Cir. 1983) (Travel Act prosecution case based on § 1952(a)(1)'s "distribut[ion] [of] proceeds" clause); *United States v. Davis*, 666 F.2d 195, 201-02 (5th Cir. Unit B 1982) (Travel Act case dealing with distribution of methaqualone).

*Lowenberg*, 853 F.2d 295, 306-07 (5th Cir. 1988) (affirming Travel Act conviction – on aiding and abetting theory – of defendant who delivered, to principal defendant, credit card vouchers used to pay for prostitution services). *Cf. United States v. Anderson*, 542 F.2d 428, 434-35 (7th Cir. 1976) (affirming Travel Act conviction of defendant who traveled from Illinois to Wisconsin to introduce a friend to an Illinois bookmaker, and then made the introduction).

The same cannot be said of Count 16, which arises from a phone call from Mr. Giorango to Ms. Kruger on March 7. There is no evidence that, following this particular phone call, Mr. Giorango committed any act (like the payment of fees and/or tips) that constituted facilitation within the meaning of the Travel Act. All that Mr. Giorango did was arrange for prostitutes for some of his friends, and that makes him no different than the operators of the gambling establishment in *Rewis*. *See United States v. Porter*, 821 F.2d 968, 975 (4th Cir. 1987) (reversing Travel Act convictions of defendant who traveled in interstate commerce for the purpose of acquiring drugs but did not obtain any). *Cf. United States v. Judkins*, 428 F.2d 333, 335 (6th Cir. 1970) (defendant's calling brothel and asking "how everything was" held insufficient to establish facilitation under § 1952(a)(3)).

## IV. Conclusion

My ruling here is a narrow one. I find only that a reasonable jury could convict Mr. Giorango on Count 6 based on the evidence submitted, and that no reasonable jury could convict him on Count 16. I do not know whether the government will be able to convince a jury on Count 6, and there may be other issues relating to the sufficiency of

the evidence that have not been presented. In my view, the government has a weak case on Count 6, but if it wishes to try to prove that charge to a jury, it is legally entitled to do so.

By September 8, 2003, the parties are to notify me as to how they wish to proceed in light of this order. I will not take any further action on Mr. Giorango's case until I hear from the parties.

DONE and ORDERED in chambers in Miami, Florida, this 28th day of August, 2003.

/s/ Adalberto Jordan
Adalberto Jordan
United States District Judge

cc: To all counsel of record.

## APPENDIX 4

*18 U.S.C. §1952 – THE TRAVEL ACT*

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to –

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity.

and thereafter performs or attempts to perform –

(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act

which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Attorney General.

## APPENDIX 5

*18 U.S.C. §3231 – DISTRICT COURTS*

The District Courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

**APPENDIX 6**

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 02-20645CR-JORDAN**

**18 U.S.C. § 1952(a)(1)**
**18 U.S.C. § 1952(a)(3)**
**18 U.S.C. § 1956(a)(1)(A)(i)**
**18 U.S.C. § 1956(h)**
**18 U.S.C. § 1962(d)**
**18 U.S.C. § 2422(a)**
**18 U.S.C. § 1341**
**18 U.S.C. § 2**
**18 U.S.C. § 982(a)(1)**
**18 U.S.C. § 1963(a)**
**18 U.S.C. § 2253(a)**

**UNITED STATES OF AMERICA**

**v.**

**JUDY KRUEGER,**
**ELI TISH,**
**ANNA YEUNG,**
**a/k/a Anna Peluso,**
**SCOTT CARLTON,**
**JAREN TANGLE,**
**a/k/a Jaren Tangel,**
**DARLENE WASHINGTON,**
**a/k/a DeeDee,**
**a/k/a DiDi,**
**ROSE LAWS,**
**LINDA LAWS,**
**a/k/a Brenda,**
**SANDY ZIMMERMAN,**
**a/k/a Rachel Lnu,**
**a/k/a Toni Theresa Edwards,**
**DEBORAH LYNN KELLER,**

**THERESA HOWARD,**
**a/k/a Aloha,**
**DENISE BETHRUM,**
**a/k/a Denise Bethurum,**
**and**
**MICHAEL GIORANGO,**
**a/k/a Danny,**

**Defendants.**
_____/

## INDICTMENT

The Grand Jury charges that:

## COUNT I

## THE ENTERPRISE

1. At all times relevant to this indictment there existed a criminal organization known as "the Circuit". "The Circuit" consisted of owners and operators of brothels, that is, prostitution businesses, and prostitutes operating in major cities throughout the United States to sell sexual services to select clientele and to facilitate the travel of prostitutes in interstate commerce who sell sexual services at "Circuit" brothels. "The Circuit" provided housing, room, board, clients, controlled substances, prostitute and client referrals, and collection and distribution of prostitution proceeds to prostitutes approved by and working within "the Circuit".

2. "The Circuit", including its leadership, membership, and associates, constituted an "enterprise," as defined by Title 18, United States Code, Section 1961(4), that is, a group of individuals associated in fact. The enterprise constituted an ongoing organization whose

members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise. The enterprise was engaged in, and its activities affected, interstate and foreign commerce.

3. At all times relevant to this indictment, "the Circuit" recruited, employed, managed and shared the services of high-priced prostitutes.

4. At all times relevant to this indictment, "the Circuit" facilitated the travel, provided housing and locations for acts of prostitution, and promoted the regular travel of prostitutes from city to city in interstate commerce in order to provide a constant turnover in prostitutes available in each major city on a regular basis.

5. At all times relevant to this indictment, "the Circuit" provided prostitution services to select customers who traveled in interstate and foreign commerce and who used facilities in interstate commerce such as hotels, telephones, airlines and the mail.

6. At all times relevant to this indictment, "the Circuit" shared information about clients, prostitutes, rates for prostitution services, and actual and anticipated law enforcement scrutiny.

## PURPOSE AND OBJECT OF THE ENTERPRISE

7. The purpose and object of the Enterprise was to coordinate the activities of "the Circuit" that is, the recruitment, employment and travel of prostitutes in and between major cities in the United States so as to increase the number and diversity of prostitutes available for the sale of sexual acts in each city; to reduce the visibility of prostitution activities to law enforcement scrutiny; to

increase the profits from the sale of sexual acts; and to provide a secure network in which the services of prostitutes could be sold to select clientele.

## ROLES IN THE ENTERPRISE

8. **JUDY KRUEGER** was the owner and operator of a prostitution business which employed, housed, and used for sexual services, prostitutes, at apartments numbered 761 and 968 of Tower Four, The Four Ambassadors Hotel, 801 South Brickell Bay Drive, Miami, Florida, and elsewhere. **JUDY KRUEGER** directed prostitutes to travel to hotels, residences, condominiums and other locations in South Florida and in other states in the United States to perform sexual acts for money. **JUDY KRUEGER** used the telephone bearing the number (305) 598-5381 to speak with clients, assign prostitutes for sex acts, arrange monetary distribution, and discuss prostitution business with other members of "the Circuit".

9. **ELI TISH** is the paramour, prostitution business partner and housemate of **JUDY KRUEGER**. **ELI TISH** collected, deposited and dispensed proceeds of the South Florida prostitution business belonging to himself and **KRUEGER**. **ELI TISH** maintained the apartments used for prostitution at the Four Ambassadors Hotel in Miami, Florida. **ELI TISH** provided directions to prostitutes to locations for the sale of sexual services in Miami, Florida and elsewhere.

10. **ANNA YEUNG a/k/a Anna Peluso** was the former owner and, until March of 2002, operator of a prostitution business in New York, New York who shared prostitutes, customers, customer information and prostitution business information with **JUDY KRUEGER** in

Miami, Florida and with other Circuit brothels owner/operators throughout the United States. YEUNG also conspired to and assisted in maintaining the New York brothel as a place for the purpose of distributing and using controlled substances, and distributing and possessing with intent to distribute controlled substances.

11. **SCOTT CARLTON** is the owner of a Circuit prostitution business in New York, New York formerly owned by **ANNA YEUNG**. **CARLTON** employed **ANNA YEUNG**, **JAREN TANGLE**, and **DARLENE WASHINGTON** to manage the day-to-day operations of the New York Circuit brothel. **CARLTON** managed the finances of the brothel through financial accounts at New York banks and elsewhere. **CARLTON** disguised the true nature of the prostitution business by maintaining the business financial accounts in the name of Access Films, Ltd., Carnival Computer Consulting, Carnival Home Fashions, and others, as depositories for brothel receipts and as sources of operating funds. These bank accounts were used to promote, manage, and carry-on **CARLTON's** Circuit brothel, and to conceal the proceeds of said brothel. **CARLTON** also conspired to and assisted in maintaining the brothel as a place for distributing and using controlled substances and distributing and possessing with intent to distribute controlled substances.

12. **JAREN TANGLE a/k/a Jaren Tangel**, was a secretary/manager of the New York Circuit brothel, owned by **CARLTON** assuming a managerial role after **ANNA YEUNG** was arrested on federal prostitution charges in March 2002. **TANGLE** made travel arrangements for prostitutes, kept a daily balance sheet for income and expenses, distributed controlled substances to clients, and paid prostitutes for providing sexual services to brothel

clients. **TANGLE** also conspired to and assisted in maintaining the brothel as a place for distributing and using controlled substances, and distributing and possessing with intent to distribute controlled substances.

13. **DARLENE WASHINGTON a/k/a DeeDee, a/k/a DiDi**, was a secretary/manager of the New York brothel, assuming a managerial role after **ANNA YEUNG** was arrested on federal prostitution charges in March 2002. **WASHINGTON** had the same duties as **TANGLE**, and on an alternating schedule made travel arrangements for prostitutes, kept a daily balance sheet for income and expenses, distributed controlled substances to clients, and paid prostitutes for providing sexual services to brothel clients. **WASHINGTON** also conspired to and assisted in maintaining the brothel as a place for distributing and using controlled substances and distributing and possessing with intent to distribute controlled substances.

14. **ROSE LAWS** and **LINDA LAWS, a/k/a Brenda**, are the owners and operators of a Circuit prostitution business in Chicago, Illinois, who share prostitutes, clients, client information and prostitution business information with **JUDY KRUEGER** in Miami, Florida, and other Circuit brothel owner/operators throughout the United States.

15. **SANDY ZIMMERMAN a/k/a Rachel Lnu, a/k/a Toni Theresa Edwards**, is the owner and operator of a Circuit prostitution business in Los Angeles, California who shares prostitutes, clients, client information and prostitution business information with **JUDY KRUEGER** in Miami, Florida, and other Circuit brothel owners/operators throughout the United States.

16. **DEBORAH LYNN KELLER** is the operator of a Circuit prostitution business in San Francisco, California, who shared prostitutes, clients, client information and prostitution business information with **JUDY KRUEGER** in Miami, Florida, and other Circuit brothel owners/ operators throughout the United States.

17. Other owners and operators of prostitution businesses in: Boston, Massachusetts; Las Vegas, Nevada; Pittsburgh and Philadelphia, Pennsylvania; New York, New York; New Orleans, Louisiana; Phoenix, Arizona; Atlanta, Georgia; and, Washington, D.C., known and unknown to the Grand Jury, shared in prostitutes, clients, client information and prostitution business information with **JUDY KRUEGER** in Miami, Florida, and other Circuit brothel owners and operators throughout the United States.

## THE RACKETEERING CONSPIRACY

18. From in or about May 1995, to the date of the return of the indictment, the exact dates being unknown to the Grand Jury, in the Southern District of Florida and elsewhere, the defendants,

**JUDY KRUEGER,**
**ELI TISH,**
**SCOTT CARLTON,**
**ANNA YEUNG,**
**a/k/a Anna Peluso,**
**JAREN TANGLE,**
**a/k/a Jaren Tangel,**
**DARLENE WASHINGTON,**
**a/k/a DeeDee,**
**a/k/a DiDi,**
**ROSE LAWS,**

**LINDA LAWS,**
**a/k/a Brenda,**
**SANDY ZIMMERMAN,**
**a/k/a Rachel Lnu,**
**a/k/a Toni Theresa Edwards,**
**and DEBORAH LYNN KELLER,**

and others known and unknown to the Grand Jury being persons, employed by and associated with "the Circuit", an enterprise as more fully described in paragraphs 1 through 17 of this count, which engaged in, and the activities of which affected, interstate commerce, did knowingly and intentionally, combine, conspire, confederate and agree with each other and with others known and unknown to the Grand Jury to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly in the conduct of the affairs of the Enterprise through a pattern of racketeering activity as defined in Title 18, United States Code, Sections 1961(1) and 1961(5), as set forth in paragraphs 28 through 35 of this indictment.

19. It was part of this conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of the enterprise.

## THE PATTERN OF RACKETEERING ACTIVITY

20. The pattern of racketeering activity as defined in Title 18, United States Code, Sections 1961(1) and 1961(5) through which the defendants agreed to conduct and participate, directly and indirectly in the conduct of the affairs of the Enterprise consists of the following acts of racketeering:

## Acts of Racketeering Involving Interstate and Foreign Travel or Use of Interstate Facilities

### Racketeering Acts A-Z

On or about the dates set forth below, in the Southern District of Florida, and elsewhere, the defendants, as set forth below according to each racketeering act, knowingly did travel and cause travel, and use and cause to be used facilities in interstate and foreign commerce with intent to promote, manage, establish, and canyon, and facilitate the promotion, management, establishment, and carrying on, of an unlawful activity, that is, a business enterprise involving prostitution, in violation of the laws of the United States and the States of Florida, New York, California, and Illinois, in violation of Title 18, United States Code, Section 1952(a), and thereafter did perform, attempt to perform and cause to be performed acts to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of said unlawful activity:

| **Racketeering Act** | **Defendant** | **Interstate Facility Used or Travel** | **Approximate Date** |
|---|---|---|---|
| A. | SCOTT CARLTON | FedEx package containing prostitute KR's business cell phone sent by CARLTON in New York to KR in Illinois | October 12, 2001 |

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|---|---|---|---|
| B. | JAREN TANGLE a/k/a Jaren Tangel | Postal Money Order mailed from TANGLE in New York to prostitute ES in Florida re: prostitution proceeds | November 19, 2001 |
| C. | ROSE LAWS JUDY KRUEGER | telephone call from prostitute "Bianca" outside the state of Florida to KRUEGER in Florida re: referral from ROSE LAWS | January 17, 2002 |
| D. | JUDY KRUEGER LINDA LAWS a/k/a Brenda | telephone call from KRUEGER in Florida to LINDA LAWS, a/k/a Brenda in Illinois re: travel of prostitute THERESA HOWARD to Miami | January 21, 2002 |
| E. | JUDY KRUEGER | telephone call from MICHAEL GIORANGO in Illinois to KRUEGER in Florida re: prostitutes for party at Lorraine Hotel on Miami Beach | January 22, 2002 |

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|---|---|---|---|
| F. | JUDY KRUEGER DEBORAH LYNN KELLER | telephone call from KRUEGER in Florida to DEBORAH KELLER in California re: prostitution client referral and discussion of prostitute THERESA HOWARD | January 24, 2002 |
| G. | JUDY KRUEGER | telephone call from KRUEGER in Florida to KELLER in California re: prostitution client | January 24, 2002 |
| H. | JUDY KRUEGER | telephone call from THERESA HOWARD in Georgia to KRUEGER in Florida re: HOWARD travel to Florida for prostitution | January 26, 2002 |
| I. | JUDY KRUEGER LINDA LAWS a/k/a Brenda | telephone call from KRUEGER in Florida to LINDA LAWS a/k/a Brenda in Illinois re: prostitute Aloha | January 28, 2002 |

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|---|---|---|---|
| J. | JUDY KRUEGER | telephone call from client, M.H. in Maryland to KRUEGER in Florida | January 17, 2002 |
| K. | JUDY KRUEGER ANNA YEUNG a/k/a Anna Peluso | telephone call from KRUEGER in Florida to YEUNG in New York re: referral for prostitute MF | January 30, 2002 |
| L. | JUDY KRUEGER | telephone call from client J.R. in Penn-sylvania to KRUEGER in Florida re: procuring prostitutes | January 30, 2002 |
| M. | JUDY KRUEGER | telephone call from prostitute DENISE BETHRUM in California to KRUEGER in Florida re: travel to Florida to work as prostitute for KRUEGER | January 2002 |

| | | | |
|---|---|---|---|
| N. | DARLENE WASHINGTON a/k/a DeeDee a/k/a DiDi JUDY KRUEGER | telephone call from KRUEGE in Florida to WASHINGTON in New York re: prostitution client referral | February 2, 2002 |
| O. | DEBORAH LYNN KELLER JUDY KRUEGER | telephone call from KELLER in California to KRUEGER in Florida re: new toll-free telephone number for prostitution business | February 12, 2002 |
| P. | JUDY KRUEGER | telephone call from MICHAEL GIORANGO in Illinois to KRUEGER in Florida re: procuring prostitutes | February 15, 2002 |

| | | | |
|---|---|---|---|
| Q. | SANDY ZIMMERMAN a/k/a Rachel a/k/a Toni Theresa Edwards JUDY KRUEGER | telephone call from ZIMMERMAN in California to KRUEGER in Florida re: referral for prostitute "Kelly" and need for prostitutes to travel to Los Angeles for electronics show | February 27, 2002 |
| R. | ROSE LAWS JUDY KRUEGER | telephone call from KRUEGER in Florida to ROSE LAWS in Illinois re: referral for prostitute JC | March 4, 2002 |
| S. | JUDY KRUEGER | telephone call from MICHAEL GIORANGO in Illinois to KRUEGER in Florida re: procuring prostitutes | March 7, 2002 |
| T. | JUDY KRUEGER | telephone call from client, M.M. in New York to Florida re: procuring prostitute | February 19, 2002 |

| | | | |
|---|---|---|---|
| U. | JAREN TANGLE a/k/a Jaren Tangel SCOTT CARLTON | TANGLE travel from Georgia to New York | March 8, 2002 |
| V. | DARLENE WASHING-TON a/k/a DeeDee a/k/a DiDi SCOTT CARLTON | WASHING-TON travel from Pennsyl-vania to New York | March 22, 2002 |
| W. | JUDY KRUEGER LINDA LAWS a/k/a Brenda | telephone call from KRUEGER in Florida to LINDA LAWS a/k/a Brenda in Chicago re: law enforcement scrutiny and prostitution client, "Irv" | March 27, 2002 |
| X. | JAREN TANGLE a/k/a Jaren Tangel SCOTT CARLTON | TANGLE travel from Georgia to New York | April 5, 2002 |
| Y. | DARLENE WASHING-TON a/k/a DeeDee a/k/a DiDi SCOTT CARLTON | WASHING-TON travel from Pennsyl-vania to New York | April 19, 2002 |

| | | | |
|---|---|---|---|
| Z. | JAREN TANGLE a/k/a Jaren Tangel SCOTT CARLTON | TANGLE travel from Georgia to New York | May 3, 2002 |

All in violation of Title 18, United States Code, Sections 1952(a)(3) and 2.

Acts of Racketeering to Persuade, Induce, and Entice Individuals to Travel in Interstate Commerce to Engage in Prostitution

Racketeering Acts AA-NN

21. On or about the dates set forth below, according to each racketeering act, in the Southern District of Florida, and elsewhere, the defendants, as set forth below, knowingly persuaded, induced, enticed, and coerced individuals known to the Grand Jury and attempted to do so as set forth below, to travel in interstate commerce to engage in prostitution.

| **Racketeering Act** | **Defendant** | **Individual Induced to Travel** | **Approximate Date** |
|---|---|---|---|
| AA. | ANNA YEUNG a/k/a Anna Peluso | prostitute KW from Florida to New York | July 10, 1998 |

| | | | |
|---|---|---|---|
| BB. | SANDY ZIMMER-MAN a/k/a Rachel a/k/a Toni Theresa Edwards | prostitute CD from Florida to California | May 18, 2001 |
| CC. | ANNA YEUNG a/k/a Anna Peluso JAREN TANGLE a/k/a Jaren Tangel | prostitute KR from Colorado to New York | June 2001 |
| DD. | ANNA YEUNG a/k/a Anna Peluso | prostitutes ES from Florida to New York | August 2001 |
| EE. | SANDY ZIMMER-MAN a/k/a Rachel a/k/a Toni Theresa Edwards | prostitute CD from Florida to California | August 13, 2001 |
| FF. | ANNA YEUNG a/k/a Anna Peluso | prostitutes ES from Florida to New York | September 28, 2001 |
| GG. | SANDY ZIMMER-MAN a/k/a Rachel a/k/a Toni Theresa Edwards | prostitute KW from Florida to California | October 2001 |

| | | | |
|---|---|---|---|
| HH. | ROSE LAWS, LINDA LAWS a/k/a Brenda | prostitute KR from Colorado to Illinois | October 2001 |
| II. | DARLENE WASHING-TON a/k/a DeeDee a/k/a DiDi | prostitute ES from Florida to New York | December 28, 2001 |
| JJ. | ROSE LAWS LINDA LAWS a/k/a Brenda | prostitute KW from Florida to Illinois | January 6, 2002 |
| KK. | ANNA YEUNG a/k/a Anna Peluso | prostitute DENISE BETHRUM from Florida to New York | January 2002 |
| LL. | JUDY KRUEGER | prostitute PP from Hawaii to Florida | February 12, 2002 |
| MM. | SCOTT CARLTON JAREN TANGLE a/k/a Jaren Tangel | prostitute KR from Colorado to New York | May 10, 2002 |
| NN. | JAREN TANGLE a/k/a Jaren Tangel | prostitute KR from New York to Connecticut | May 13, 2002 |

All in violation of Title 18, United States Code, Sections 2422(a) and 2.

Acts of Racketeering to Commit Mail Fraud (OO-SS)

22. A Florida, attorney, M.M. who practiced law at a firm located on South Dixie Highway, Miami, Florida, regularly hired the sexual services of prostitutes provided by KRUEGER and TISH. M.M. made periodic payments, totaling approximately $111,000 between May 1995 and March 2002, through his law firm, to KRUEGER and TISH. These payments were billed to clients and disguised as law firm expenses for "surveillance work" or "background investigations" allegedly performed by TISH or KRUEGER's sons.

23. From in or about May 1995 and continuing to in or about March 2002, the exact dates being unknown to the Grand Jury, at Miami-Dade County, in the Southern District of Florida, the defendants,

**JUDY KRUEGER**
and
**ELI TISH,**

together with M.M., devised a scheme and artifice to defraud and for obtaining money by means of false and fraudulent material representations to defraud M.M.'s clients by charging the clients for investigation and surveillance when in truth and in fact as KRUEGER, TISH, and M.M. well knew, these payments were used to pay for the services of prostitutes.

24. On or about the dates specified as to each racketeering act, in the Southern District of Florida, the defendants,

**JUDY KRUEGER**
and
**ELI TISH,**

together with M.M., having devised the above-described scheme and artifice to defraud and for obtaining money by means of false pretenses, for the purpose of executing and in order to effect the scheme and artifice to obtain money, did knowingly and willfully cause to be delivered by the United States Postal Service, according to the directions thereon, such matters and things, as more particularly described in each racketeering act below:

| RACKETEERING ACT | APPROX. DATE | DESCRIPTION OF MAILING |
|---|---|---|
| OO. | August 31, 1997 | a fraudulent invoice for $1,200.00, via the United States Postal Service to: client Ryder Truck Rental, Inc. |
| PP. | June 11, 1998 | a fraudulent invoice for $300.00, via the United States Postal Service to: client North American Risk Services, Inc. |
| QQ. | September 11, 1998 | a fraudulent invoice for $500.00, via the United States Postal Service to: client Ryder Truck Rental, Inc. |

| | | |
|---|---|---|
| RR. | December 17, 1998 | a fraudulent invoice for $500.00, via the United States Postal Service to: client North American Risk Services, Inc. |
| SS. | December 12, 2001 | a fraudulent invoice for $1000.00, via the United States Postal Service to: Mt. Hawley, an insurance company located in Peoria, IL. |

All in violation of Title 18, United States Code, Sections 1341 and 2.

Acts of Racketeering: Narcotics (TT-UU)

Racketeering Act TT

25. From in or about September 2000, to on or about May 14, 2002, the defendants,

**SCOTT CARLTON,**
**ANNA YEUNG,**
**a/k/a Anna Peruso,**
**JAREN TANGLE,**
**a/k/a Jaren Tangel, and**
**DARLENE WASHINGTON,**
**a/k/a DeeDee,**
**a/k/a DiDi,**

and others known and unknown to the Grand Jury, did knowingly manage and control an enclosure, that is, the premises located at Penthouse 1, 230 East 30th Street, New York, New York, and knowingly and intentionally

made available for use said premises for the purpose of unlawfully storing, distributing, and using a controlled substance, that is, cocaine, in violation of Title 21, United States Code, Section 856(a)(2) and Title 18, United States Code, Section 2.

Racketeering Act UU

26. On or about May 13, 2002, the exact date being unknown to the Grand Jury, the defendants,

**SCOTT CARLTON and**
**JAREN TANGLE,**
**a/k/a Juren Tangel,**

did cause travel in interstate commerce from New York, New York, to Connecticut with the intent to promote, manage, establish, carry-on and facilitate the promotion, management, establishment, and carrying-on of an unlawful activity, that is, the distribution of cocaine, in violation of Title 21, United States Code, Section 841(a)(1), and thereafter did perform, attempt to perform and cause to be performed acts to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of said unlawful activity.

All in violation of Title 18, United States Code, Section 1952(a)(3) and 2.

Acts of Racketeering Involving Money Laundering Conspiracy (VV-XX)

Racketeering Act VV

27. From in or about September 2000, and continuing through May 14, 2002, the defendants,

**SCOTT CARLTON,**
**ANNA YEUNG,**
**a/k/a Anna Peluso**
**JAREN TANGLE,**
**a/k/a Jaren Tangel, and**
**DARLENE WASHINGTON**
**a/k/a DeeDee,**
**a/k/a DiDi,**

did knowingly combine, conspire, confederate and agree, knowing that the property involved in financial transactions represented the proceeds of some form of unlawful activity, to conduct and attempt to conduct financial transactions, which in fact involved the proceeds of specified unlawful activity, that is, acts indictable under Title 18, United States Code, Section 1952, interstate travel and use of facilities to promote and carry on a prostitution business and acts indictable under Title 18, United States Code, Section 2422, persuading, inducing, enticing and coercing persons to travel in interstate and foreign commerce to engage in prostitution, and acts indictable under Title 21, United States Code, Sections 841, 846 and 856, narcotics offenses with the intent to promote the carrying on of said specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i), and knowing that the transactions were designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i) and 2.

28. It was part of said conspiracy that the defendants would open, maintain, and use bank accounts in the name of Access Films, Ltd., Carnival Computer Consulting, Carnival Home Fashions, and others, in order to

conduct and conceal the operation, maintenance, and finances of "the Circuit" brothel operated at Penthouse 1, 230 East 30th Street, New York, New York.

29. It was further part of said conspiracy that rental payments for the premises at that address would be made by wire transfer using said accounts containing proceeds of said unlawful activity.

30. It was further part of the conspiracy that some employees of the New York Circuit brothel located at said address would receive their salaries by check drawn on accounts maintained and controlled by the defendants.

31. It was further part of the conspiracy that clients of the New York Circuit brothel would pay for prostitution services with credit cards and banks checks making payment to accounts maintained and controlled by the defendants in the names of Access Films, Ltd., Carnival Computer Consulting, Carnival Home Fashions and others.

## OVERT ACTS

32. In furtherance of this conspiracy to conduct financial transactions with the proceeds of specified unlawful activity with the intent to promote the unlawful activity and to conceal the unlawful activity, and in order to effect the objects of this conspiracy, one or more of the conspirators committed or caused to be committed the following overt acts:

a. On or about May 3, 2002, JAREN TANGLE, a/k/a Jaren Tangel, received paycheck No. 10012 from Access Films, Ltd., for work done to manage and promote

the prostitution business, for pay period 4/23/2002 to 4/29/2002, in the amount of $381.86.

b. On March 6, 2002, SCOTT CARLTON caused to be sent a wire transfer from his Carnival Home Fashions Account at Citibank to Abington Trust for the New York Circuit brothel rental payment in the amount of $7,495.00.

c. On April 8, 2002, SCOTT CARLTON caused to be sent a wire transfer from his Carnival Home Fashions Account at Citibank to Abington Trust for the New York Circuit brothel rental payment in the amount of $7,495.00.

d. On May 14, 2002, SCOTT CARLTON caused to be sent a wire transfer from his Access Films, Ltd. Account at Doral Bank to Abington Trust for the New York Circuit brothel rental payment in the amount of $7,495.00.

e. On or about May 14, 2002, F.S., a financial securities broker, did pay by check in the amount of $4800, made payable to Access Films, Ltd., for prostitution services and distribution of cocaine.

All in violation of Title 18, United States Code, Section 1956(h).

Racketeering Act XX

33. Beginning on or about September 7, 1997, and continuing through on or about February 28, 2002, at Miami-Dade County, in the Southern District of Florida, the defendants,

**ELI TISH**
**and**
**JUDY KRUEGER,**

did knowingly combine, conspire, confederate and agree, knowing that the property involved in financial transactions represented the proceeds of some form of unlawful activity, to conduct, and attempt to conduct, said financial transactions, which in fact involved the proceeds of specified unlawful activity that is, acts indictable under Title 18, United States Code, Section 1952, interstate travel and use of facilities to promote and carry on a prostitution business and acts indictable under Title 18, United States Code, Section 2422, persuading, inducing, enticing and coercing persons to travel in interstate and foreign commerce to engage in prostitution, with the intent to promote the carrying on of said unlawful activity in violation of Title 18, United States Code, Section 2422, with the intent to promote the carrying on of said specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

34. It was part of this conspiracy that the defendants, **ELI TISH and JUDY KRUEGER**, would convert the proceeds of prostitution activity into money orders and then pay for expenses of the prostitution business with those money orders.

35. It was further part of this conspiracy that the defendants, **ELI TISH and JUDY KRUEGER**, would maintain apartments, 761 and 968 at 801 Brickell Drive, Miami, Florida, in order to house prostitutes and to provide a location for prostitution activity. The rent for these apartments were paid for by money orders obtained with the proceeds of the prostitution business.

36. In furtherance of this conspiracy to conduct financial transactions with the proceeds of specified unlawful activity with the intent to promote the unlawful activity and in order to effect the objects of this conspiracy, one or more of the conspirators committed or caused to be committed the following overt acts:

**OVERT ACTS**

a. On or about January 8, 2002, ELI TISH presented $1,600 in Western Union Money Orders for rental payment for apartment 761, 801 Brickell Bay Drive, Tower 4, Miami, Florida.

b. On or about February 19, 2002, ELI TISH presented $1,600 in Western Union Money Orders for rental payment for apartment 968, 801 Brickell Bay Drive, Tower 4, Miami, Florida.

c. On or about March 11, 2002, ELI TISH presented $1,600 in Western Union Money Orders for rental payment for apartment 761, 801 Brickell Bay Drive, Tower 4, Miami, Florida.

d. On or about March 18, 2002, ELI TISH presented $1,600 in Western Union Money Orders for rental payment for apartment 968, 801 Brickell Bay Drive, Tower 4, Miami, Florida.

All in violation of Title 18, United States Code, Section 1956(h).

37. All of the above in violation of Title 18, United States Code, Section 1962(d).

## TRAVEL ACT

## COUNT 2

1. On or about November 19, 2001, the exact date being unknown to the Grand Jury, in the Southern District of Florida and elsewhere, the defendant,

**JAREN TANGLE,**
**a/k/a Jaren Tangel,**

did use a facility in interstate commerce, with intent to distribute the proceeds of an unlawful activity, that is, a prostitution offense in violation of the laws of New York and the United States, and thereafter performed, or attempted to perform, the distribution of the proceeds from said prostitution, all in violation of Title 18, United States Code, Sections 1952(a)(1) and 2.

## COUNTS 3-17

1. On or about the dates set forth below, in the Southern District of Florida, and elsewhere, the defendants, as set forth below according to count, knowingly and willfully did travel and cause travel, and use and cause to be used facilities in interstate and foreign commerce with intent to promote, manage, establish, and carry on, and facilitate the promotion management, establishment and carrying on of an unlawful activity, that is, a business enterprise involving prostitution, in violation of the laws of the United States and the States of Florida, New York, California, and Illinois, in violation of Title 18, United States Code, Section 1952(a), and thereafter did perform, attempt to perform and cause to be performed acts to promote, manage, establish, and carry

on, and facilitate the promotion, management, establishment, and carrying on of said unlawful activity:

| Count | Defendants | Interstate Facility Used or Travel | Approximate Date |
|---|---|---|---|
| 3. | DENISE BETHRUM a/k/a Denise Bethurum JUDY KRUEGER | telephone call from BETHRUM in California to KRUEGER in Florida re: travel to Florida to work as prostitute for KRUEGER | January 12, 2002 |
| 4. | ROSE LAWS JUDY KRUEGER | telephone call from prostitute "Bianca" from outside the state of Florida to KRUEGER in Florida re: referral from ROSE LAWS | January 17, 2002 |
| 5. | JUDY KRUEGER LINDA LAWS a/k/a Brenda | telephone call from KRUEGER in Florida to BRENDA LAWS in Illinois re: travel of prostitute THERESA HOWARD to Miami | January 21, 2002 |

| | | | |
|---|---|---|---|
| 6. | MICHAEL GIORANGO a/k/a Danny JUDY KRUEGER | telephone call from GIORANGO in Illinois to KRUEGER in Florida re: prostitutes for party at Lorraine Hotel on Miami Beach | January 22, 2002 |
| 7. | JUDY KRUEGER DEBORAH LYNN KELLER | telephone call from KRUEGER in Florida to KELLER in California re: prostitute client | January 24, 2002 |
| 8. | THERESA HOWARD a/k/a Aloha JUDY KRUEGER | telephone call from HOWARD in Georgia to KRUEGER in Florida re: HOWARD travel to Florida for prostitution | January 26, 2002 |
| 9. | JUDY KRUEGER LINDA LAWS a/k/a Brenda | telephone call from KRUEGER in Florida to LINDA LAWS in Illinois re: prostitute Aloha | January 28, 2002 |

| | | | |
|---|---|---|---|
| 10. | JUDY KRUEGER ANNA YEUNG a/k/a Anna Peluso | telephone call from KRUEGER in Florida to YEUNG in New York re: referral for prostitute MF | January 30, 2002 |
| 11. | JUDY KRUEGER | telephone call from client J.R. in Pennsylvania to KRUEGER in Florida re: procuring prostitutes | January 30, 2002 |
| 12. | DARLENE WASHINGTON a/k/a DeeDee a/k/a DiDi JUDY KRUEGER | telephone call from KRUEGER in Florida to WASHINGTON in New York re: client referral | February 2, 2002 |
| 13. | DEBORAH LYNN KELLER JUDY KRUEGER | telephone call from KELLER in California to KRUEGER in Florida re: new toll-free telephone number for prostitution business | February 12, 2002 |

| | | | |
|---|---|---|---|
| 14. | SANDY ZIMMERMAN a/k/a Rachel a/k/a Toni Theresa Edwards JUDY KRUEGER | telephone call from ZIMMERMAN in California to KRUEGER in Florida re: referral for prostitute Kelly and need for prostitutes to travel to Los Angeles for electronics show | February 27, 2002 |
| 15. | ROSE LAWS JUDY KRUEGER | telephone call from KRUEGER in Florida to ROSE LAWS in Illinois re: referral for prostitute "Jeanette" | March 4, 2002 |
| 16. | MICHAEL GIORANGO a/k/a Danny JUDY KRUEGER | telephone call from GIORANGO in Illinois to KRUEGER in Florida re: procuring prostitutes | March 7, 2002 |

| | | | |
|---|---|---|---|
| 17. | JUDY KRUEGER LINDA LAWS a/k/a Brenda | telephone call from KRUEGER in Florida to LINDA LAWS a/k/a Brenda in Chicago re: Law Enforcement security and prostitution client, "Irv" | March 27, 2002 |

All in violation of Title 18, United States Code, Sections 1952(a)(3) and 2.

## MANN ACT

## COUNTS 18-26

1. On or about the dates set forth below, in the Southern District of Florida, and elsewhere, the defendants, as set forth below, knowingly persuaded, induced, enticed, and coerced individuals known to the Grand Jury as set forth below, to travel in interstate commerce to engage in prostitution.

| Count | Defendant | Individual Induced to Travel | Approximate Date |
|---|---|---|---|
| 18. | ANNA YEUNG a/k/a Anna Peluso | prostitute KW from Florida to New York | July 10, 1998 |
| 19. | SANDY ZIMMERMAN a/k/a Rachel a/k/a Toni Theresa Edwards | prostitute CD from Florida to California | May 18, 2001 |

| | | | |
|---|---|---|---|
| 20. | SANDY ZIMMERMAN a/k/a Rachel a/k/a Toni Theresa Edwards | prostitute CD from Florida to California | August 13, 2001 |
| 21. | SANDY ZIMMERMAN a/k/a Rachel a/k/a Toni Theresa Edwards | prostitute KW from Florida to California | September 2001 |
| 22. | ANNA YEUNG a/k/a Anna Peluso | prostitute ES from Florida to New York | September 28, 2001 |
| 23. | DARLENE WASHINGTON a/k/a DeeDee a/k/a DiDi | prostitute ES from Florida to New York | December 28, 2001 |
| 24. | ROSE LAWS LINDA LAWS a/k/a Brenda | prostitute KW from Florida to Illinois | January 6, 2002 |
| 25. | JUDY KRUEGER | prostitute Teresa Howard from California to Florida | January 26, 2002 |
| 26. | JUDY KRUEGER ROSE LAWS | prostitute PP from Hawaii to Florida | February 12, 2002 |

All in violation of Title 18, United States Code, Sections 2422(a) and 2.

## MONEY LAUNDERING

## COUNT 27

1. The allegations contained in paragraphs 1-17 of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. Beginning on or about September 7, 1997, and continuing through February 28, 2002, at Miami-Dade County, in the Southern District of Florida, the defendants,

**ELI TISH**
**and**
**JUDY KRUEGER,**

did knowingly combine, conspire, confederate and agree, knowing that the property involved in financial transactions represented the proceeds of some form of unlawful activity, to conduct, and attempt to conduct, said financial transactions, which in fact involved the proceeds of specified unlawful activity that is, the use of interstate facilities to promote prostitution in violation of Title 18, United States Code, Section 1952; and travel in interstate commerce for prostitution, in violation of Title 18, United States Code, Section 2422, with the intent to promote the carrying on of said specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

3. It was part of this conspiracy that the defendants, **ELI TISH and JUDY KRUEGER**, would convert the proceeds of prostitution activity into money orders and then pay for expenses of the prostitution business with those money orders.

4. It was further part of this conspiracy that the defendants, **ELI TISH and JUDY KRUEGER**, would

maintain apartments, 761 and 968 at 801 Brickell Drive, Miami, Florida, in order to house prostitutes and to provide a location for prostitution activity. The rent for these apartments were paid for by money orders obtained with the proceeds of the prostitution business.

5. In furtherance of this conspiracy to conduct financial transactions with the proceeds of specified unlawful activity with the intent to promote the unlawful activity and in order to effect the objects of this conspiracy, one or more of the conspirators committed or caused to be committed the following overt acts:

**OVERT ACTS**

a. On or about January 8, 2002, ELI TISH presented $1,600 in Western Union Money Orders for rental payment for apartment 761, 801 Brickell Bay Drive, Tower 4, Miami, Florida.

b. On or about February 19, 2002, ELI TISH presented $1,600 in Western Union Money Orders for rental payment for apartment 968, 801 Brickell Bay Drive, Tower 4, Miami, Florida.

c. On or about March 11, 2002, ELI TISH presented $1,600 in Western Union Money Orders for rental payment for apartment 761, 801 Brickell Bay Drive, Tower 4, Miami, Florida.

d. On or about March 18, 2002, ELI TISH presented $1,600 in Western Union Money Orders for rental payment for apartment 968, 801 Brickell Bay Drive, Tower 4, Miami, Florida.

All in violation of Title 18, United States Code, Section 1956(h).

**COUNTS 28-31**

1. The allegations contained in paragraphs 1-17 of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. Beginning on or about September 7, 1997 and continuing through February 28, 2002, at Miami-Dade County, in the Southern District of Florida, the defendants,

**ELI TISH**
**and**
**JUDY KRUEGER,**

knowing that the property involved in financial transactions, listed below according to count, represented the proceeds of some form of unlawful activity, did conduct, and attempt to conduct, said financial transactions, which in fact involved the proceeds of specified unlawful activity that is, the use of interstate facilities to promote prostitution in violation of Title 18, United States Code, Section 1952; and travel in interstate commerce for prostitution, in violation of Title 18, United States Code, Section 2422, with the intent to promote the carrying on of said specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i). Each financial transaction is described below and included in this indictment as a specific count:

| Count | Date | Financial Transaction | Amount |
|---|---|---|---|
| 28. | January 8, 2002 | Western Union Money Orders for rental payment for apartment 761 | $1,600 |
| 29. | February 19, 2002 | Western Union Money Orders for rental payment for apartment 968 | $1,600 |
| 30. | March 11, 2002 | Western Union Money Orders for rental payment for apartment 761 | $1,600 |
| 31. | March 18, 2002 | Western Union Money Orders for rental payment for apartment 968 | $1,600 |

All in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i) and 2

**MAIL FRAUD**

**COUNTS 32-36**

1. The allegations contained in paragraphs 1 through 17 of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. M.M., an attorney who practices law at a firm located in Miami, Florida, was a regular client of JUDY KRUEGER and ELI TISH. M.M. regularly hired the sexual services of prostitutes provided by KRUEGER and TISH. M.M. made periodic payments, totaling approximately

$111,000.00 between May 1995, and March 2002, through his law firm, to KRUEGER and TISH, as payment for prostitution services and disguised as fees for "surveillance work" and "background investigations" allegedly performed by TISH or KRUEGER's sons.

3. From on or about May 1995, and continuing to on or about March 2002, the exact dates being unknown to the Grand Jury, at Miami-Dade County, in the Southern District of Florida, the defendants,

**JUDY KRUEGER,**
**and**
**ELI TISH,**

and M.M. devised a scheme and artifice to, defraud and for obtaining money by means of false and fraudulent material representations by charging M.M.'s clients for purported investigations and surveillance services, when in truth and in fact, as the defendants well knew no such services were performed and the clients' payments for such services were for the services of prostitutes, in violation of Title 18, United States Code, Section 1341 and 2.

4. On or about the dates specified as to each count, in the Southern District of Florida, the defendants, **JUDY KRUEGER and ELI TISH**, having devised the above-described scheme and artifice to defraud and for obtaining money by means of false pretenses, for the purpose of executing and in order to effect the above scheme and artifice to obtain money, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, such matters and things, as more particularly described in each count below:

| COUNT | APPROX. DATE | DESCRIPTION OF MAILING |
|---|---|---|
| 32. | August 31, 1997 | A fraudulent invoice of $1,200.00, via the United States Postal Service to: client Ryder Truck Rental, Inc. |
| 33. | June 11, 1998 | A fraudulent invoice of $300.00, via the United States Postal Service to: client North American Risk Services, Inc. |
| 34. | September 11, 1998 | A fraudulent invoice of $500.00, via the United States Postal Service to: client Ryder Truck Rental, Inc. |
| 35. | December 17, 1998 | A fraudulent invoice of $500.00, via the United States Postal Service to: client North American Risk Services, Inc. |
| 36. | December 12, 2001 | A fraudulent invoice of $1000.00, via the United States Postal Service to: client Mt. Hawley, an insurance company located in Peoria, IL. |

All in violation of Title 18, United States Code, Sections 1341 and 2.

## FORFEITURE

(Title 18, United States Code, Sections 982(a)(1), 1963(a) and 2253(a))

1. The allegations of Count 1 and Counts 21 through 31 of this Indictment are realleged and by this reference

fully incorporated herein for the purpose of alleging forfeiture to the United States of America pursuant to the provisions of Title 18, United States Code, Sections 982(a)(1), 1963(a) and 2253(a).

A. Upon conviction of any violation of Title 18, United States Code, Section 1956, each defendant shall forfeit to the United States all property, real and personal, involved in such offense and any property traceable to such property, pursuant to Title 18, United States Code, Section 982(a)(1).

B. Upon conviction of any violation of Title 18, United States Code, 1962, each defendant shall forfeit to the United States:

(i) any interest the defendant has acquired or maintained in violation of Section 1962; which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1).

(ii) any –

(a) interest in;
(b) security of;
(c) claim against; or
(d) property or contractual right of any kind affording a source of influence over;

any enterprise which the defendant has established, operated, controlled, conducted, or participated in the conduct of, in violation of Section 1962; which interests, securities, claims, and rights are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(2); and

C. Upon conviction of any violation of Title 18, United States Code, Section 2422, each defendant shall

forfeit to the United States any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and any property, real or personal, used or intended to be used to commit or to promote the commission of such offense, pursuant to Title 18, United States Code, Section 2253.

2. The property subject to forfeiture includes but is not limited to the following:

A. the sum of $1,300,000.00.

B. Other personal property as follows:

a. $15,456.68, representing the contents of Account No. 0110004066 at Doral Bank, New York, New York;

b. $2,685.00 in U.S. Currency seized on May 14, 2002 during search of Penthouse 1, 230 East 30th Street, New York, New York.

c. $650.00 in U.S. Currency seized on January 28, 2002 from outside the door of apartment 761, located at 801 Brickell Bay Drive, Miami, Florida.

d. $500.00 Money Order seized on March 21, 2002 from 11382 Southwest 87th Terrace, Miami, Florida 33173.

e. $500.00 Money Order seized on March 21, 2002 from 11382 Southwest 87th Terrace, Miami, Florida 33173.

3. If the property described above as being subject to forfeiture pursuant to the violations of Title 18, United States Code, Sections 1956-1962 and or 2422, as a result of any act or omission of the defendants,

(i) cannot be located upon the exercise of due diligence;

(ii) has been transferred or sold to, or deposited with a third party;

(iii) has been placed beyond the jurisdiction of the Court;

(iv) has been substantially diminished in value; or

(v) has been commingled with other property which cannot be subdivided without difficulty;

it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Sections 982(b), 1963(m) and or 2253(o), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described above or to seek the return of the property to the jurisdiction of the Court so that the property may be seized and forfeited.

All pursuant to Title 21, United States Code, Section 853(p) and Title 18, United States Code, Sections 982, 1963 and 2253.

A TRUE BILL

/s/ [Illegible]
FOREPERSON

/s/ Guy A. Lewis
GUY A. LEWIS
UNITED STATES
ATTORNEY

/s/ Richard D. Gregorie
RICHARD D. GREGORIE
ASSISTANT UNITED
STATES ATTORNEY
SENIOR LITIGATION
COUNSEL

/s/ Scott E. Ray
SCOTT E. RAY
ASSISTANT UNITED
STATES ATTORNEY

No. 05-443

# In the Supreme Court of the United States

MICHAEL GIORANGO, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTION PRESENTED

Whether the evidence was sufficient to support petitioner's conviction under 18 U.S.C. 1952 which proscribes, *inter alia*, the use of interstate facilities to promote or facilitate unlawful prostitution activity, when it showed that petitioner telephoned a Miami prostitution house from Chicago to arrange for prostitution for others at a party in Miami and thereafter traveled to Miami for the party, offered prostitutes to his friends, and arranged for further prostitution encounters for his friends and business associates.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-2) is not published in the Federal Reporter but is reprinted in 137 Fed. Appx. 277. The pretrial order of the district court (Pet. App. 10-22) is unreported.

### JURISDICTION

The judgment of the court of appeals was entered on June 27, 2005. The petition for a writ of certiorari was filed on September 23, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

After a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on one count of using the facilities of interstate

commerce with the intent to promote a business involving prostitution, in violation of 18 U.S.C. 1952(a)(3) (Travel Act).[1] He was sentenced to three years of probation with six months of intermittent confinement. Pet. App. 4, 6-7. The court of appeals affirmed. *Id.* at 1-2.

1. Petitioner and twelve co-defendants were indicted for their roles in "the Circuit," a prostitution business "operating in major cities throughout the United States," including Chicago, New York, Los Angeles, and Miami. Pet. 4; Pet. App. 27. "There was a madam in each city and the prostitutes circulated from one city to the next," Pet. 4-5, to "provide a constant turnover in prostitutes available in each major city," Pet. App. 28.

Petitioner's co-defendant Judy Krueger was the madam who operated the Miami enterprise on the Circuit. Pet. 4. As such, she "directed prostitutes to travel to hotels, residences, condominiums and other locations in South Florida and in other states in the United States to perform sexual acts for money." Pet. 4-5; Pet. App. 29. Krueger also owned several condominiums in a Miami hotel where clients could meet with the prostitutes she employed. Pet. 4; Gov't C.A. Br. 3. If the prostitutes met with the client at the condominium, the client was charged $350 per hour; if they met elsewhere, the client was charged $400 per hour. Krueger received 40% of the fee, and the prostitutes received 60% of the fee and their tips, generally ranging between $50 and $200. Pet. 4; Gov't C.A. Br. 3.

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[1] The district court granted a judgment of acquittal at the close of the government's case on a second Travel Act count. Pet. 8.

2. The Federal Bureau of Investigation began an investigation into the Circuit and placed a wiretap on Krueger's phone in early 2002. During that time, several phone calls were placed from petitioner in Chicago, Illinois, to Krueger in Miami, Florida. Pet. App. 11-14.

Petitioner was a managing member of a limited liability company that owned a hotel in Miami Beach. Pet. 5-6; Gov't C.A. Br. 2-3. On January 22, 2002, petitioner telephoned Krueger from Chicago and told her that he was coming to Miami for three to four weeks and wanted to have a party at his hotel during Super Bowl weekend for some "high rollers." Pet. 6; Pet. App. 11-12. He asked Krueger whether she could supply prostitutes for the party and discussed which ladies would be appropriate. Pet. 6; Pet. App. 12.

Petitioner again spoke with Krueger on January 24, 29, 30, and 31 to finalize the details for the party which, he said, would be attended by "10-15 men and some women." Pet. App. 12. He confirmed the time with Krueger, asked that she "send as many prostitutes as she could to the party because that would make him look good," agreed to "about 4-7 prostitutes," discussed the specific women selected, and guaranteed that each prostitute would receive 1-2 hours' worth of fees, *i.e.*, $400 to $800, for the time spent at the party. Pet. 6; Pet. App. 12; Gov't C.A. Br. 5.

3. Petitioner traveled to Miami for the party, which was held on January 31, 2002. Pet. App. 12. During the party, Krueger received a phone call from one of the prostitutes who complained that she had only been given $50 for 30 minutes with one of the guests. Pet. 6, 8; Pet. App. 12. Krueger then talked to petitioner who agreed to pay the prostitute her $400 fee. Pet. 6; Pet. App. 12.

4. In February and March 2002, petitioner continued to contact Krueger to arrange for prostitutes for his friends. Pet. App. 12-14; Pet. 6. On February 3, 4, and 5, 2002, petitioner spoke with Krueger several times about "whether she could arrange a date for a friend." Pet. 6; Pet. App. 13. She did, and petitioner paid the prostitute after she met with his friend in a Miami hotel. Pet. 6. On March 15, 2002, he talked to Krueger about which prostitutes would be available when he and his "good friend" would be in town. Pet. App. 14.

Petitioner was not employed by Krueger, did not receive compensation from Krueger, and had no control over the women that Krueger hired. Gov't C.A. Br. 7. Krueger's business, however, relied on referrals because "there was no advertising or listing anywhere in telephone directories or on the internet," meaning that "a client had to know someone to refer them before they could get an appointment." *Ibid.*

5. Petitioner sought dismissal of the two counts against him, asserting that no reasonable jury could find him guilty of violations of the Travel Act, 18 U.S.C. 1952(a)(3), Pet. App. 10, because he was a "mere customer" of the illegal activity, Pet. 14. The district court granted judgment of acquittal as to one count because there was no evidence that petitioner followed through after the specified telephone call to promote or facilitate the unlawful activity requested. Pet. App. 21; Gov't C.A. Br. 1 n.1, 2. The district court allowed the other count to proceed to the jury because a reasonable jury could find a violation of the statute based on petitioner's work on the Super Bowl weekend party. Pet. App. 20, 55; Gov't C.A. Br. 2.

6. The jury was instructed that, in order to return a verdict of guilty, it needed to find that petitioner "was more than a mere customer of Krueger's prostitution ring and that he had promoted or facilitated her prostitution ring." Gov't C.A. Br. 9. The jury returned a guilty verdict. Pet. 8.

7. On appeal, petitioner argued that he was wrongly convicted of a Travel Act violation because he was nothing more than a "mere customer." The court of appeals rejected that claim, finding that "there was sufficient evidence for the jury to have found that [petitioner] promoted or facilitated Judy Krueger's prostitution enterprise." Pet. App. 1.

## ARGUMENT

Petitioner contends (Pet. 9-18) that the Travel Act does not apply to his conduct because he was a mere customer of the prostitution ring. Contrary to that assertion, the jury found that petitioner was more than a mere customer, and there was sufficient evidence to support that conclusion. Petitioner's factbound disagreement with that conclusion does not warrant further review by this Court.

1. The Travel Act, 18 U.S.C. 1952(a)(3), provides that a person is guilty of an offense punishable by fine or imprisonment for not more than five years, or both, where the person "travels in interstate * * * commerce or uses * * * any facility in interstate * * * commerce, with intent to * * * promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform" such promotion, management, establishment, or carrying on, of the unlawful activity. The Act covers "unlawful activ-

ity" consisting of, *inter alia*, "prostitution offenses in violation of the laws of the State in which they are committed or of the United States." 18 U.S.C. 1952(b).

Petitioner used the facilities of interstate commerce to telephone Krueger and arrange for prostitutes for a party in Miami, traveled to Miami for the party, held the party, and continued to arrange and subsidize prostitutes for his friends and business partners. It is also undisputed that Krueger's prostitution ring was an enterprise engaged in unlawful activity under the Travel Act. Pet. App. 14. Petitioner thereby assisted in the promotion and carrying on of the unlawful prostitution ring.

Petitioner contends that his conduct does not fall within the Travel Act because he was a "mere customer" of the unlawful activity, and not an operator or manager of it. Pet. 12-13. Petitioner relies on this Court's decision in *Rewis* v. *United States*, 401 U.S. 808 (1971), where the Court concluded that the Travel Act did not apply to "mere customers" who traveled across state lines to make use of an unlawful gambling establishment because the Act "prohibits interstate travel with the intent to 'promote, manage, establish, carry on, or facilitate' certain kinds of illegal activity." *Id.* at 811. Therefore, "the ordinary meaning of this language suggests that the traveler's purpose must involve more than the desire to patronize the illegal activity." *Ibid.*

The Court also concluded that the mere fact that a local unlawful business was patronized by out-of-state customers was not generally sufficient to subject the owners of the business to the Travel Act because the Act was "aimed primarily at organized crime and, more specifically, at persons who reside in one State while operating or managing illegal activities located in an-

other." *Rewis*, 401 U.S. at 811. Nevertheless, the Court recognized, there may be "occasional situations" where the owner so encouraged interstate patronage that there would be a Travel Act violation. *Id.* at 814.

Petitioner effectively reads the *Rewis* decision as limiting Travel Act liability to operators and managers and as excluding customers who also promote and facilitate the enterprise in ways that go beyond mere patronage. Contrary to his assertion, *Rewis* did not preclude liability under the statute for persons who use interstate facilities with the intent to promote or facilitate the illegal activity, even though they may also be customers. See *Rewis*, 401 U.S. at 811. Instead, *Rewis* held that "mere customers," who do not have the "intent to 'promote, manage, establish, carry on, or facilitate'" the unlawful activity, do not violate the Act.

2. Petitioner contends (Pet. 7-8, 17) that he was nothing more than a "mere customer" because he was not paid for his efforts and because he had no control over the business decisions of Krueger. The jury found, however, that petitioner was more than a mere customer and that petitioner promoted or facilitated the prostitution ring. Gov't C.A. Br. 9. The record supports the jury's finding.

Petitioner facilitated Krueger's business by arranging prostitution encounters for his friends and business partners in Miami and by negotiating their terms with Krueger. He arranged to have prostitutes available for the men at his Super Bowl weekend party and traveled to Miami to follow through on the plan. He arranged subsequent encounters for friends and business associates, each time screening the prostitutes Krueger offered to ensure they would be acceptable. Pet. App. 11-14. Contrary to petitioner's claim (Pet. 16), that activ-

ity went beyond the role of a mere consumer of prostitution services who recommended clients to the business.

Petitioner was also a promoter of Krueger's business, which relied, at least in part, on promotion by individuals like petitioner because there was no other advertising for the business. On one occasion, petitioner arranged for the chosen prostitute to stop by his table at a restaurant so his friend would see the prostitute and agree to the encounter. Gov't C.A. Br. 5-6. On another occasion, petitioner connected his friend into a telephone call he was having with Krueger so the friend could hear the description of the prostitute being offered and agree to her services upon his arrival in Miami. *Id.* at 6.

In this way, petitioner's conduct is more akin to that of the defendant in *United States* v. *Chambers*, 382 F.2d 910 (6th Cir. 1967), a case that this Court cited approvingly in *Rewis*, 401 U.S. at 813, in discussing the interstate-travel requirements of the statute. In that case, the defendant was not paid by the interstate prostitution business, but testified that he went to the prostitution house "as a favor" to "tak[e] out the garbage, stok[e] the fire," and "answer[] the door and the telephone." *Id.* at 912-913. The defendant knew, though, that other defendants were transporting customers from Ohio to the house in Kentucky for unlawful prostitution. *Id.* at 912. The court of appeals, therefore, held that it was reasonable for the jury to have concluded that his actions were taken to promote the unlawful activity occurring across state lines. *Id.* at 913.[2]

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[2] The cases cited by petitioner (Pet. 14-15) involve defendants who managed or operated the illegal business. As petitioner acknowledges,